

IN THE UNITED STATES DISTRICT COURT
FOR THE THIRD CIRCUIT

United States of America
(Respondent)

v.

C. Tate George,
(Petitioner)

Civil Action No. 17-2641

Criminal Case No. 3:12-CR-204-01 (AET)

RECEIVED

MAY 22 2019

Chambers of
Anne E. Thompson, U.S.D.J.

PETITIONER'S MOTION PURSUANT TO RULE 5(E)
AND REPLY TO THE GOVERNMENT'S "ANSWER"
FOR RESPONSE TO MOTION TO AMEND
PETITIONER'S VACATE, SET ASIDE OR CORRECT SENTENCE
PURSUANT TO 28 U.S.C. §2255

NOW before the Court, Petitioner C. Tate George's, pro se, Reply Motion seeking the Court to Grant Petitioner's previous April 11th, 2019 "Motion Seeking Court's Permission to Reply to the Government's Answer (By way of Court Order) also under Rule 5 "the Answer and the Reply" (A)(E); as well as, Grant this motion to the Court's Show Cause Order dated April 5th, 2019 where the Order states clearly the following:

The Court "ORDERED that the United States shall respond to the Motion to Amend within 30 days of this ORDER."

Under Fed.R. and Procd.Rule 5, all parties are to adhere strictly to the rules of the Court's Show Cause orders. Any attempts to file past court-given deadlines (unless the Court allows additional time) the party (in this case) should not be heard and thus waives any rights to unaddressed disputed claims; thus conceding to claims made by the other party.

Based on such a timeline, the Government had only until May 6th, 2019 to Respond (and by Fed.R. and Procd) however, Government responded some ten (10) days after the deadline finally now officially declining to file and follow the Court's specific order; thus waiving any and all further claims pertaining to Petitioner's new claims already within his Habeas Corpus 2255 filing. Although the Court identified its 2241 Motion as amended; the Government is correct that Petitioner's 2241 claims were cited already in Petitioner's 2255 filing. The Government states it will, "rely on its initial Response to Petitioner's petition." Yet, still, in its Notice Response to the Court, giving Notice to Reply on its previous initial Response; the Government actually does give reasons. As for such should be construed as their Answer. Petitioner

believes the Court should not bother to spend more time "forcing" the Government to continue wasting the Court's time and allowing them more delays and additional time; when it is clear that the Government fully intends on using stall tactics and furthering frivolous misstatements and blatant mischaracterizations claims to avoid addressing new claims already brought forward in Petitioner's 2255 filing. The Government should not be given any more time to come to the same conclusion as their May 16th, 2019 Notice which was filed again after the Court Ordered deadline. Period!

However, if the Court decides to allow the Court's Notice informing the Court that they do not intend to fully answer the Court's April 15th, 2019 Show Cause Order, and the Court accepts the Government's notice dated May 16th, 2019; then Petitioner must be given the same courtesy to Reply to the Government's Notice and Reasoning given in their Notice to Complete the Rule 5 Answer and Reply process as well as, so that the record correctly and completely is reflected for future appellate collateral processes; if it is so warranted.

It is because the Government purposefully will not address the relative conduct and hardship victim loss claim (new) cited in Petitioner's 2255 filing, Petitioner moved to have the Third Circuit sister court by way of a 2241 filing as a matter of law, citing correctly that the Government has conceded and waived any and all claims regarding this matter. It is now clear by the Government's own words in its May 16th, 2019 Notice to this Court; that even after almost two (2) years; they will not address Petitioner's legal and procedural claims pertaining to an illegal enhanced sentence on matters that were brought forth post trial (outside of the jury's verdict). Such avoidance by the Fed.R. of Proced and as a matter of law is a concession and a waiver to further dispute this material fact. The Government cites a repeated false narrative that the Forensic (Court ordered) Business Report addresses all loss claims, thus the Court should not bother to hear this relitigated claim. Regrettably, that false claim is nothing but a smoke screen, when the record leaves without question; the Forensic Business Report already cited in Petitioner's Direct Appeal, DOES NOT address anything related to relative conduct loss, nor victim hardship loss claims. The Government is intentionally and knowingly asking this Court to not follow Fed.R. and Proced, along with denying Petitioner's rights to be lawfully heard because, he is simply not entitled to be heard after seven years in the making.

The Government in its Notice only cites their opinion drafted as reasons without following the Court's Show Cause Order, and not citing correct material facts; nor case law on why Petitioner should not be allowed his Constitutional and legal rights to be correctly argued before this Court. Then in a back-handed (we really cannot be bothered with this anymore) hailmary kind of statement, suggests if the Court wanted (or forces us to) then give us more time (more delays) and we will come up with something. Again, the Government seems to think (and by way of its May 16th, 2019 Notice declining to follow the Court's Show Cause Order) that they do not have to listen nor comply to anything the Court has to say. This attempt or lack thereof, if allowed and further tolerated, then Petitioner's Motion (this Motion) and Reply to the Government's Answer is vitally needed to address false claims repeated by the Government in its short three paragraph waiver Notice to the Court; and to correct such false statements specifically, and states the following:

- 1) The Government claims Petitioner has filed yet another Motion in yet another forum....attempt to vacate his conviction for wire fraud. This time, the Motion has been constructed as a Motion to Amend... (See the Government's Notice)

Petitioner's Answer

The Government's claim here is completely incorrect and does not reflect the record at all. Petitioner did not file an Amendment to his 2255; well in fact, it was the Court that titled the transfer of Petitioner's 2241 filing that had merit due to Petitioner's 2255 filing still pending, which the Government chose to ignore one of the main New Grounds of loss allowed to to ineffective assistance of counsel pre-trial, at trial and post-trial (in part regarding post trial). (See Dkt. No. 52). The Government again has chosen to deflect the Court's Show Cause Order to address Petitioner's claims within Petitioner's original 2255 filing; thus once again waving their rights to dispute any and all new claims and grounds as a part of Petitioner's 2255 filing. Again, the Government cites nothing on the record to support such a claim and falsely contrived opinion.

- 2) The Government then states, "In his initial Petition, Petitioner simply repackaged the original claims made on direct appeal into ineffective assistance claims, which were already litigated (and rejected) by the Court of Appeals."

Petitioner's Answer

The Government's claim is absolutely false and the record proves the following:

A) Petitioner's Direct Appeal Claims and Grounds were very specific such as:

Ground 1: Methodology on hearsay testimony and admitted charts and graphs at both trial and sentencing (that went unrefuted in the Government's Answer on Appeal). Furthering; Petitioner argued that the charts did not show or prove in the Government's charts and graphs admitted into evidence proved Petitioner's alleged fraud and misrepresentation. Period!

B) Petitioner's Direct Appeal Claims and Grounds were very specific such as:

Ground 2: Brady Violation committed by the Government, providing Petitioner's email on blocked disc; along with not providing vital financial data from Charles "Chip" Houlihan, who handled 95% of all of Petitioner's business operations on a daily basis. Note: Nowhere does it mention lack of preparation of trial counsel under ineffectiveness.

C) Petitioner's Direct Appeal Claims and Grounds were ver specific such as:

Ground 3: District Court's abuse of discretion in sealing Forensic Report and "plain error" at sentencing by not using the Report for loss for trial victims only the amount of \$510,000 per the indictment.

Petitioner further claims that it was the lack of not using the Forensic Report that caused an increase and an illegal sentencing outside the correct guidelines, because monies are still owed and not lost. Petitioner states as an undisputed fact, that there were "no - zero" claims on direct appeal that dealt with relative conduct, victim hardship and alike; that also caused an enhanced illegal sentence to the tune of more than an additional \$2 million dollars!

Next, although the Government would like conveniently to assert that Petitioner is now pushing previous claims into an ineffective assistance of counsel claim ; that cannot be supported by either the record, nor by the law. Petitioner understands by the standard of the (Fed.R. and Procd) that ineffectiveness claims are rarely suitable for resolution on direct appeal, because, unless the issue was raised and adjudicated first in the district court in line with a 28 U.S.C. §2255 Habeas Corpus, there is rarely an adequate

record allowing informed appellate consideration. See (U.S. v. Khedr), 343 F.3d 96-99-100 (2d Cir. 2003).

Petitioner never (not once) makes claims (old) in previous direct appeal filings addressing claims of ineffectiveness against trial counsel. Petitioner as a matter of law, has the right to argue claims for ineffective assistance of counsel on New Grounds as he has done so. In addition; if Petitioner's happens to mistakenly filed an ineffectiveness claim against counsel or happened to state a claim previously listed yet unheard or properly addressed during the direct appeal filing, courts have routinely declined to address such claims at that direct appeal stage of the appellate process, and allows Petitioners to pursue such claims that went unaddressed by the Court and/or the Government; as well as new grounds not previously heard during Petitioner's Habeas Corpus Collateral Review. Again, the Government gives an opinion of reason and cites nothing from the actual record that supports such a false claim why relative conduct and alike cannot be heard by the courts.

- 3) Next; simply stated, and the record will show without a doubt that Petitioner has not relitigated old claims, nor repackaged such claims into a new forum as the Government continues to state to this Court to avoid material facts concerning the "Guideline calculation error and a complaint about the Pre Sentence Report stated on direct appeal and in his original 2255 petition, regarding the fulsomeness of his attorney's preparation and so-called "Forensic Business Report."

Petitioner's Answer:

As previously stated; the Government is correct that Petitioner's claims are correctly laid out in his original 2255 petition. The issue is not that Petitioner already claims error of the Guideline-calculation; the issue remains sadly unaddressed by the Government and as such by the Rules of Fed.Procd, Petitioner rightly argues both in his 2255 and 2241 (now transferred by Judge Kane) with merit that this Court Ordered the Government to finally address; yet once again the Government declined and thus officially waives any further rights by Federal Rules to dispute, and thus by law concedes. Period!

Furthering, the Government misstates a major point to Petitioner's claims for error of the Guideline-calculation and thus is why they have avoided addressing it at all cost. Such new claims by Petitioner that the Government looks to

avoid, yet the record is clear pertaining to the "Forensic Business Report" and why the Court ordered the Report in the first place such as:

- After 3 failed P.S.R's provided by Probation; Petitioner was successfully able to provide proof that he did not owe monies to individuals the Government had provided to the Probation Office as so-called loss victims. The Court reversed its previous decision to allow and utilize certified investor's letters to correctly address loss post-trial; then seal 6,000 plus documents while agreeing to let Petitioner use those documents during the Appeals process. This Court recently ruled this to be the case, also.
- The Court specifically Ordered the Forensic Report for trial (so-called) victims; and absolutely nothing to do with relative conduct loss victims and/or hardship victims claims - whatsoever (which there are none and Probation provided no Affidavits claiming such). The Trial loss and conviction was a total of (\$510,000). Petitioner has correctly stated in his 2255 Petition that the actual amount still outstanding and not loss is exactly (\$519,000) and not the ridiculous more than \$2.5 million dollars Petitioner was sentenced to and given restitution for.

Incredibly, the Government does not defend that true fact that the Probation office never followed the sentencing Rule pursuant to 18 U.S.C. §3664, where the Rule of Law clearly states:

The Probation Officer (office) is required to provide notice to each of the victims (post-trial) and afford them the opportunity to submit affidavits detailing their losses and hardship claims. See (18 U.S.C §3664(d)(2) and sub paragraph (IV). (U.S. v. Gammage), 580 F.3d 777, 779 (8th Cir. 2009) where the Court found that scant documentation (such as charts and hearsay testimony) provides no support for a conclusion a defendant is entitled to a higher enhanced sentence. And such documentation without required process of the Fed.R. of Proc. pursuant to 18 U.S.C §3664, the Court should find such actions as insufficient and unreliable and shall be remanded back for re-sentencing.

The record will clearly show that the Government stated at the time of sentencing that "the Government did not have to provide accurate information to sentence this defendant - only the charts and an agent is needed." This was a lie and does not line up with the Law or the Rule of Fed.Procd.

4) Lastly, unbelievably, the Government states a bold face lie, when it states..."Petitioner is not actually making any new claims, so the Government will respectfully rely on its initial Response....(See Government Notice).

Petitioner's Answer:

As mentioned earlier in this Response Motion, the Government seems to flat out repeatedly defy the Court's Order. On top of now missing five (5) Court Show Cause Orders and disrespecting the Court and the Rules of the Court put in place to attempt fairness to the process, the Government in its claims continually thumbs its nose at the Court and decides that they can do as they very well please; and then condescendingly states; "If the Court wishes for additional briefing by the Government, the Government will of course be happy to provide it."

This comment is what is so frustrating to those in the Petitioner's situation, fighting to bring the truth forward; when the Government blatantly receives a Court Order over and over; then refuses to follow the Court's direction as well as, the Fed R. and Procd. of the Court; and once again responds ten (10) days past the due date to respond like it's no big deal. Not only is this not fair based on the Rules of the Court; it is devastatingly insulting to the Court and the Rules of the Court. Nevermind that if any Petitioner would dare try such a thing; he (or she) would be barred from being heard immediately upon missing just one deadline, notwithstanding five missed deadlines.

If insult to injury could not get worse, the Government levies yet one more dagger when it states, "At long last, the Court system should be finished with this matter more than seven years in the making and this Court should deny Petitioner's 2255 motion without hearing." (Again citing not one case law or Fed.R. of Procd to come to such a determination).

(Translation:) (After re-reading multiple times, this Notice to the Court; you don't have to go too far to read between the lines to come to what the Government is really wanting to say, which is this:)

"The Court System (despite Petitioner being a citizen of this country) should be finished with [this black man, or "the N-word"] already, and with this matter because, even if his claims are correct and have merit, it has been more than seven years in the making and he has no rights to be heard,

no matter if we decide to dispute his claims or not -- even if they have merit, so what."

Petitioner prays this Court does the right thing here and please stop delaying your ruling to protect the injustice put forth by the Government over these past two years in particular. Petitioner honestly would rather be denied quickly with respect, than to be dragged along any further in shame by how the Government has treated this Honorable Court and the Rules of Federal Procd. This is supposed to be a Rule (1) Purpose and Scope Speedy process, where both the Government and Petitioners are expected to not only respect the Judge and Court; but also one another; and not avoid the Show Cause Orders like they are the plague, and then humiliatingly tell the Court we're not responding to your Order yet again; however, here's a carrot "if you force us to, then give us more time to delay -- we will put something together after yet more strategic delays." The Government may wish, or believe, that if this Court denies Petitioner's 2255 motion on new grounds well within his rights and by waiver and concession by the Government, then so be it. However, make no mistake; although the Government would love nothing more but to see Petitioner go away and die already, Petitioner will never stop pushing to be appropriately heard by the Rule of Law and in the interest of Justice. Petitioner has addressed the false claims proffered in the Government's May 16, 2019 Notice to the Court. The Government offers not one bit of supportive, on the record factual and material evidence in their favor. This is not about their opinion, it is supposed to be about the Rules and the Laws of this country.

Wherefore, the Petitioner, C. Tate George, pro se, Respectfully requests that this Honorable Court first Grant Petitioner's previous April 11th, 2019 Motion to Reply to the Government's "Answer" (and now Notice) even though brief; secondly, Grant this Motion in this Instant Matter (both) Petitioner's 2255 Habeas Corpus filing to overturn Petitioner's conviction; and/or Grant in part Petitioner's request to be resentenced due to harmful errors committed by trial judge, sentencing Petitioner outside of the proper Guidelines concerning Relative Conduct, as well as (so-called) Victim Hardship false claims never proven and due to the Government not following rules pursuant to 18 U.S.C. §3664 (and alike) and refusing to address all New Grounds/Arguments never made and/or addressed by the Court or the Government. Such avoidance by the Government to address all new Grounds within the Petitioner's Habeas Corpus 2255 filing, by the Fed.R. and Procd, has officially waived any such dispute -

which means Petitioner is due for Immediate Release From Custody. The Appropriate level of 23 (would be the Range of 47-57 months.) Per the Petitioner's prior filings, Petitioner clearly states he has been out-living those Guidelines of a max of 57 months by almost ten (10) months and counting.

Third, and lastly; If the Court decides to actually further fact-find to get to the truth and address what is actually on the record (and not just take the Government's false and unsubstantiated claims); please immediately Order an Evidentiary Hearing that Petitioner filed and dated September 15th, 2018; that the Court has yet to decide on and is still pending with the Court; and for such other and further relief deemed proper and necessary in the interest of Justice.

Dated: May 17th, 2019

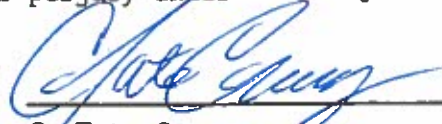
Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "C. Tate George", is written over a horizontal line.

C. Tate George, pro se
Fed. Reg. No. #63223-050
Allenwood LSCI
PO Box 1000
White Deer, PA 17887

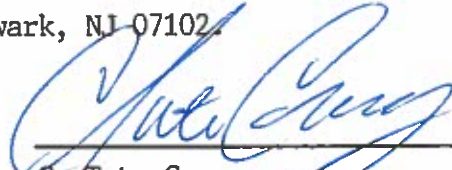
AFFIDAVIT

I HEREBY CERTIFY that the foregoing facts are true and correct to the best of my knowledge and belief upon pain of perjury under 28 USC §1746.


C. Tate George, pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the following Motion Pursuant to Rule 5(E) and Petitioner's Response was mailed this 19th day of MAY, 2019, by first class mail, postage prepaid to: Zack Intrader, AUSA, Office of the US Attorney, 970 Broad Street, Rm. 700, Newark, NJ 07102.


C. Tate George, pro se

White Deer, P.A. 17887
P.O. Box 1000
L.S.E. J. Allen Wood - 600

Low Security Correctional Institution

Allenwood, PA 15015

Date 5-20-19

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Judge Anne Thompson
402 E State ST
Trenton, NJ 08608
United States

Clerk of the Court

